

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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DEBORAH STAMPFLI, an individual,

Plaintiff,

v.

SUSANVILLE SANITARY DISTRICT, a political subdivision of the State of California, STEVE J. STUMP, in his individual and official capacities, ERNIE PETERS, in his individual and official capacities, DAVID FRENCH, in his individual and official capacities, KIM ERB, in his individual and official capacities, MARTY HEATH, in his individual and official capacities, DOES I-V, inclusive, BLACK & WHITE CORPORATIONS I-V, and ABLE & BAKER COMPANIES, inclusive,,

Defendant.

No. 2:20-cv-01566-WBS-DMC

MEMORANDUM AND ORDER RE:  
SUSANVILLE SANITARY DISTRICT,  
STEVEN J. STUMP, JOHN MURRAY,  
ERNIE PETERS, DAVID FRENCH,  
KIM ERB, AND MARTY HEATH'S  
MOTION TO DISMISS

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Plaintiff Deborah Stampfli ("plaintiff") brought this action against the Susanville Sanitary District ("District"),

1 Steve J. Stump, John Murray, Ernie Peters, David French, Kim Erb,  
2 Marty Heath, Black & White Corporations I-V, Able and Baker  
3 Companies, and Does 1-5 inclusive, for breach of express  
4 contract, breach of implied-in-fact contract, promissory  
5 estoppel, violation of district laws, policies, and procedure,  
6 deprivation of federal and state procedural due process rights,  
7 conspiracy to deprive plaintiff of procedural due process rights,  
8 and failure to produce public records.

9 Defendants now move to dismiss the Second Amended  
10 Complaint pursuant to Federal Rule of Civil Procedure 12 (b) (6)  
11 for failure to state a claim upon which relief can be granted.  
12 ("Mot. to Dismiss" (Docket No. 42).)

13 I. Factual and Procedural Background

14 Plaintiff was hired as treasurer by the District in  
15 2005. (See 2d. Am. Compl. ("SAC") at ¶ 90 (Docket No. 38.)) At  
16 the time of her hiring, plaintiff was informed that she would be  
17 a member of Operating Engineers Local Union No. 3 and that she  
18 would be entitled to the benefits and protections of the  
19 agreements between the union and the District, including the  
20 right to continued employment and termination only for good cause  
21 and after the satisfaction of procedural requirements. (See id.)  
22 From 2005 to 2013, plaintiff performed her assigned duties and a  
23 host of additional duties typically performed by supervisory  
24 personnel, and consistently received high performance  
25 evaluations. (See id. at ¶ 91.)

26 By October 2013, plaintiff was performing many  
27 management and administrative functions but, because she was a  
28 union member, she could not participate in confidential meetings

1 of the District's Board of Directors ("the board"). (See id. at  
2 ¶ 94.) Her inability to participate in these meetings was  
3 inconvenient because the board frequently had to stop meetings or  
4 delay them to obtain information possessed only by plaintiff.  
5 (See id.) Because of these difficulties, the board proposed the  
6 creation of a new management level position with the District  
7 entitled "Office Administrator" which would allow plaintiff to  
8 participate in confidential board meetings but would require her  
9 to relinquish her union membership. (See id.)

10 When plaintiff was offered this new position, she  
11 declined it because she did not wish to lose the job security  
12 offered by her union affiliation. (See id. at ¶ 96.) In  
13 response to her concerns, plaintiff was advised by the General  
14 Manager and the District's general counsel that although she  
15 could not remain a union member, she would not become an at-will  
16 employee and would be afforded all the job security rights and  
17 benefits available to union members. (See id. at ¶ 98.)  
18 Plaintiff was promised that her employment with the District  
19 would only be terminated for cause and in accordance with  
20 established Skelly procedures.<sup>1</sup> (See id.) Because of these  
21 representations, plaintiff relinquished her position as treasurer  
22 and accepted the new position of Office Administrator. (See id.  
23 at ¶ 99.)

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24  
25 <sup>1</sup> The term Skelly procedures refers to the California  
26 Supreme Court case Skelly v. State Personnel Board, 15 Cal.3d 194  
27 (1975). In Skelly, the California Supreme Court held that a  
28 permanent public employee's property rights (i.e. their vested  
right to continued employment) cannot be taken away by an  
employer without first being afforded certain procedural  
safeguards. See id. at 215.

1           During 2016, plaintiff performed many duties typically  
2 performed by the General Manager. (See id. at ¶ 104.) By  
3 October 2017, the General Manager recommended to the board that  
4 plaintiff be provided a 20% salary increase to account for the  
5 additional duties she performed and that she receive the  
6 additional title of Assistant General Manager. (See id. at ¶  
7 109.) During an October 2017 board meeting, the board stated  
8 that plaintiff's additional duties would likely be temporary  
9 until such time as a new general manager had obtained sufficient  
10 experience. (See id. at ¶ 112.) Plaintiff was fully aware that  
11 there might come a time when the new General Manager no longer  
12 needed her assistance in performing the duties and functions of  
13 General Manager, and was led to believe that if this change  
14 occurred, she would be relieved of any additional Assistant  
15 General Manager duties, but would continue to perform all the  
16 functions she previously performed as Office Administrator. (See  
17 id. at ¶ 114.) Plaintiff was never told that her position as  
18 Office Administrator had somehow been converted to a position  
19 terminable at will or that she could summarily be deprived of her  
20 permanent position of Office Administrator. (See id.) However,  
21 the board approved the recommended change and prepared a new job  
22 description which stated that the plaintiff would work in  
23 conjunction with the District's General Manager. (See id. at ¶  
24 113.)

25           While the aforementioned events were unfolding, a  
26 nearby local utility district discovered that its General Manager  
27 had embezzled money from the district. (See id. at ¶ 116.) The  
28 members of the District's board wished to ensure that the

1 District not be victimized in the same fashion. (See id.)

2 Plaintiff was specifically instructed to keep the board apprised  
3 of any changes which might impair the security of the District's  
4 financial accounting services. (See id.)

5 In March 2018, the District hired defendant Steve Stump  
6 to the position of probationary General Manager, and he relied  
7 heavily on plaintiff for matters pertaining to administrative  
8 operations. (See id. at ¶ 118.) Following the completion of  
9 General Manager Stump's probationary period, he became  
10 increasingly hesitant to work in conjunction with the plaintiff.  
11 (See id. at ¶ 122.) As part of his efforts to strip plaintiff of  
12 any perceived co-equal authority she may have had with him, he  
13 unilaterally amended plaintiff's job description to eliminate the  
14 requirements that she work "in conjunction with" the General  
15 Manager. (See id. at ¶ 123.)

16 In April 2019, General Manager Stump wanted plaintiff  
17 to shift funds from various accounts to allow for the purchase of  
18 a portable generator. (See id. at ¶¶ 125-26.) Given plaintiff's  
19 instructions from several board members regarding the financial  
20 affairs of the District, she requested that General Manager Stump  
21 delay this purchase until after a new budget for 2020 was created  
22 or seek approval from the board for the purchase. (See id.)  
23 This infuriated him because he believed plaintiff was refusing to  
24 acknowledge his authority over her. (See id.)

25 General Manager Stump realized that plaintiff was in  
26 control of the District's finances because certain computer  
27 programs which controlled the District's finances were only on  
28 the accounting department's computers. (See id. at ¶ 130.) On

1 or about January 8, 2020, General Manager Stump directed  
2 plaintiff to have these computer programs placed on his personal  
3 office computer. (See id.) By placing these programs on his  
4 computer, he would be able to transfer funds between accounts,  
5 make payments out of accounts, adjust customer accounts, or  
6 manipulate billings. (See id. at ¶ 131.) Because of the  
7 instructions she had received from board members, plaintiff told  
8 General Manager Stump that she wished to meet with certain board  
9 members to determine whether it was necessary for such highly  
10 sensitive programs to be placed on his computer. (See id. at ¶  
11 132.)

12 General Manager Stump responded to this by telling  
13 plaintiff to "get out" and informing her that she was on unpaid  
14 administrative leave. (See id. at ¶ 133.) Prior to this action,  
15 General Manager Stump had never informed plaintiff that her  
16 refusal to comply with his request would result in disciplinary  
17 action. (See id.) On January 14, 2020, plaintiff was informed  
18 by General Manager Stump that her administrative leave would be  
19 paid, but not why she was placed on leave in the first place.  
20 (See id. at ¶ 135.) On March 6, 2020, General Manager Stump  
21 informed plaintiff that her "at-will" employment as Office  
22 Administrator/Assistant General Manager was no longer needed and  
23 would end as of March 6, 2020. (See id. at ¶ 136.) At the time  
24 of her termination, plaintiff had accrued 128 hours of earned  
25 sick leave and 8 hours of personal leave. (See id. at ¶ 137.)  
26 Prior to her termination, the plaintiff had never received notice  
27 of the reason for her administrative leave nor was she ever  
28

1 afforded an opportunity to be heard. (See id. at ¶ 138.)<sup>2</sup>

2 II. Discussion

3 The relevant inquiry under Rule 12(b)(6) is whether,  
4 accepting the allegations in the complaint as true and drawing  
5 all reasonable inferences in the plaintiff's favor, the complaint  
6 has stated "a claim to relief that is plausible on its face."  
7 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "The  
8 plausibility standard is not akin to a 'probability requirement,'  
9 but it asks for more than a sheer possibility that a defendant  
10 has acted unlawfully." Ashcroft v. Iqbal, 556 U.S. 662, 678  
11 (2009). "Threadbare recitals of the elements of a cause of  
12 action, supported by mere conclusory statements, do not suffice."  
13 Id. Although legal conclusions "can provide the framework of a  
14 complaint, they must be supported by factual allegations." Id.  
15 at 679.

16 III. Federal Claims

17 A. Procedural Due Process

18 Plaintiff's fifth cause of action alleges that she was  
19 deprived of procedural due process rights under the United States  
20 Constitution. She contends that she had a constitutionally  
21 protected property interest in continued employment which was  
22 violated by General Manager Stump, the individual members of the  
23 board, and the District itself when she was terminated without  
24 good cause and denied the pre- and post- termination procedures  
25 duly enacted and adopted by the District. (See SAC at ¶¶ 240-

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26 <sup>2</sup> Although both plaintiff and defendants submitted  
27 extrinsic evidence to the court, after conferring with the court  
28 at the hearing on June 14, 2021, the parties agreed that the  
extrinsic evidence should not be taken into consideration.

61.)

1. Claims Against General Manager Stump

Plaintiff asserts that General Manager Stump violated her procedural due process rights under the United States Constitution when he terminated her without cause and without following policies duly enacted and adopted by the District. (See SAC at ¶ 240-260.) To state a claim for a violation of § 1983, a plaintiff must allege: (1) a violation of rights protected by the Constitution or created by federal statute; (2) proximately caused by a "person"; (3) who was acting under color of state law. See Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991).

"The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." Board of Regents v. Roth, 408 U.S. 564, 569 (1972). State law defines what is and what is not property. See Dorr v. Butte Cnty., 795 F.2d 875, 876 (9th Cir. 1986). Under California law, a "permanent employee," dismissible only for cause, has "a property interest in his continued employment which is protected by due process." Skelly, 15 Cal.3d 194, 207-08 (1975). While "a probationary (or nontenured) civil service employee, at least ordinarily, may be dismissed without a hearing or judicially cognizable good cause, an employee who has completed her probationary period ordinarily has a legitimate claim of entitlement to continued public employment." See Dorr, 795 F.2d at 876. (internal citations omitted).

Plaintiff has alleged that she was a permanent employee

1 and had completed any probationary period associated with her  
2 position. (See SAC at ¶ 115.) Plaintiff has identified policies  
3 promulgated by the District, such as Resolution 04.06 enacted in  
4 July 2004, which states that "individuals shall only be  
5 disciplined for just cause." (See id. at ¶ 77). Plaintiff also  
6 points to District Ordinance No. 17, enacted in March 1976, which  
7 states that the "District Manager shall have the right, for due  
8 cause. . . to dismiss. . . or suspend without pay for thirty  
9 calendar days any permanent employee." (See id. at ¶ 70.)  
10 Ordinance No. 17 further provides that "notice of such action  
11 must be in writing and served personally on such employee and . .  
12 . shall specify the penalty and contain a statement of the reason  
13 or reasons therefore." (See id.) Plaintiff has therefore  
14 adequately alleged that she was a permanent employee dismissible  
15 only for cause and had a property interest in her continued  
16 employment protected by due process.

17 Defendants apparently do not dispute that plaintiff's  
18 termination was proximately caused by General Manager Stump or  
19 that he was acting under color of state law. Plaintiff has  
20 alleged that it was General Manager Stump who placed her on  
21 administrative leave, (see SAC at ¶¶ 133-135), and terminated her  
22 on March 6, 2020. (See SAC at ¶ 136.) This suffices to allege  
23 that General Manager Stump's action was the proximate cause of  
24 her alleged injury at this stage of the proceedings. Plaintiff  
25 has also identified Ordinance No. 17, which states that the  
26 District Manager (here, General Manager Stump) "shall have the  
27 right, for due cause, . . . to dismiss. . . any permanent  
28 employee." (See SAC at ¶ 70.) The Supreme Court has held that

1 "generally, a public employee acts under color of state law while  
2 acting in his official capacity or while exercising his  
3 responsibilities pursuant to state law." West v. Atkins, 487  
4 U.S. 42, 50 (1988). Plaintiff has accordingly also adequately  
5 alleged that General Manager Stump was acting under color of  
6 state law when he terminated her without pre- or post-termination  
7 proceedings.

8 Defendants alternatively argue that General Manager  
9 Stump is entitled to qualified immunity in his individual  
10 capacity because a reasonable officer in his position would have  
11 believed that it was acceptable to terminate an at-will employee  
12 employed by the District. (See Mot. to Dismiss at 8-12.) The  
13 doctrine of qualified immunity "protects government officials  
14 'from liability for civil damages insofar as their conduct does  
15 not violate clearly established statutory or constitutional  
16 rights of which a reasonable person would have known.'" Pearson  
17 v. Callahan, 555 U.S. 223, 231 (2009) (citing Harlow v.  
18 Fitzgerald, 457 U.S. 800, 818 (1982)). However, "[d]etermining  
19 claims of qualified immunity at the motion to dismiss stage  
20 raises special problems for legal decision making." See Keates  
21 v. Koile, 883 F.3d 1228, 1234 (9th Cir. 2018). The Ninth Circuit  
22 has opined that "[i]f the operative complaint contains even one  
23 allegation of a harmful act that would constitute a violation of  
24 a clearly established constitutional right, then plaintiffs are  
25 entitled to go forward with their claims." See id. at 1235.

26 As discussed above, plaintiff has adequately alleged  
27 that she was a permanent employee, dismissible only for cause,  
28 with "a property interest in [her] continued employment which is

1 protected by due process.” Skelly, 15 Cal.3d at 207-08. The  
2 right to procedural due process for tenured public employees who  
3 are dismissible only for cause is well-established under federal  
4 law. See Bd. of Regents of State College v. Roth, 408 U.S. 564  
5 (1972); see Dorr, 795 F.2d at 876. Defendants’ argument assumes  
6 that plaintiff was an at-will employee, or, at the least, that it  
7 would have been reasonable for an officer in General Manager  
8 Stump’s position to believe that plaintiff was an at-will  
9 employee. Such an assumption runs counter to the allegations in  
10 plaintiff’s complaint, however. See Enesco Corp. v.  
11 Price/Costco, Inc., 146 F.3d 1083, 1085 (9th Cir. 1998) (stating  
12 that all allegations of material fact are taken as true and  
13 construed in the light most favorable to the nonmoving party).  
14 Therefore, the court concludes that General Manager Stump is not  
15 entitled to qualified immunity at this stage.

16 Accordingly, the court will deny defendants’ motion to  
17 dismiss plaintiff’s procedural due process claim under 42 U.S.C.  
18 § 1983 as against General Manager Stump.

## 19 2. Claims Against Individual Board Members

20 Plaintiff next asserts that the individual board  
21 members violated plaintiff’s procedural due process rights under  
22 the United States Constitution when they terminated her without  
23 cause and without following pre- and post- termination procedures  
24 duly enacted and adopted by the District. (See SAC at ¶¶ 240-  
25 260.) She further alleges that if the board members did not  
26 actually vote to terminate her without cause, they “authorized,  
27 approved, knowingly acquiesced in, and/or ratified” the actions  
28 of the other defendants who deprived plaintiff of her

1 constitutional rights and did not intervene to protect her from  
2 unconstitutional acts. (See id. at ¶¶ 12-30.)

3 Plaintiff's Second Amended Complaint is completely  
4 devoid of any facts demonstrating that the board, or any  
5 individual board member, played any role in her termination, or  
6 even ratified her termination after it occurred. Plaintiff  
7 candidly states in her opposition that "[s]he does not know what  
8 role the board played in the decision [to terminate her]." (See  
9 Opp'n to Mot. to Dismiss at 27.) (Docket No. 44.) While she  
10 states that she "fully believes that Mr. Stump had gained the  
11 approval of the Board before he terminated the plaintiff's  
12 employment," (see id.), her mere belief, absent any facts to  
13 support it, does not suffice.

14 The closed session meetings that plaintiff points the  
15 court to in which the board discussed the "significant exposure  
16 to litigation" prior to her termination similarly do not provide  
17 any facts to support her allegation that the board played a role  
18 in terminating her or that the board ratified the decision to  
19 terminate her. (See SAC at ¶¶ 49-58.) Nor do these sessions  
20 indicate that the individual board members or the Board "refused  
21 the plaintiff's request for pre- and post- termination due  
22 process." (See Opp'n to Mot. to Dismiss at 42.) The only thing  
23 that these agendas indicate is that the board was concerned about  
24 potential litigation from plaintiff and had closed session  
25 meetings to discuss this with counsel. In short, plaintiff has  
26 not adequately alleged facts to demonstrate that the board played  
27 any role in her termination or the decision to deny her  
28 procedural due process rights to a pre- and post- termination

1 hearing.

2           Plaintiff additionally contends that the individual  
3 board members may be held liable for their failure to take  
4 remedial steps after the alleged deprivation of her procedural  
5 due process rights, even if they did not affirmatively vote to  
6 terminate her or deny her procedural due process rights. (See  
7 Opp'n to Mot. to Dismiss at 41.) Plaintiff argues that the  
8 failure to "take any remedial steps after the violations can  
9 indicate a deliberate choice and establish an independent basis  
10 for liability." (See id. (citing McKay v. City of Hayward, 949  
11 F. Supp. 2d 971, 986 (N.D. Cal. 2013)); see also Gomez v. Vernon,  
12 255 F.3d 1118, 1127 (9th Cir. 2001) (holding that a "turn-a-blind  
13 eye approach does not insulate the Department").)

14           However, as the court stated in its previous order,  
15 (see Docket No. 34 at 8.), neither plaintiff, defendants, nor  
16 this court have identified any binding precedent supporting a  
17 duty to intercede outside of the law enforcement context. The  
18 cases cited by plaintiff are distinguishable because those cases  
19 both dealt with the law enforcement and prison context,  
20 respectively, and were concerned with municipal or departmental  
21 liability for failing to take remedial steps after violations,  
22 not the liability of defendants acting in their individual  
23 capacities. Plaintiffs contend that Monteilh v. County of Los  
24 Angeles, 820 F. Supp. 2d 1081, 1093 (C.D. Cal. 2011) only stands  
25 for the limited proposition that the "Constitution does not  
26 require all public employees to intercede, outside their own  
27 bureaucratic hierarchies, on behalf of persons whose rights are  
28 in jeopardy." However, plaintiff has not identified any binding

1 case which affirmatively requires public employees, outside of  
2 the law enforcement context, to intercede on behalf of persons  
3 whose rights are in jeopardy even within their own bureaucratic  
4 hierarchies. In the absence of such binding precedent, the court  
5 finds that plaintiff has not adequately demonstrated that the  
6 individual board members had a duty to intervene to protect  
7 plaintiff from a violation of her procedural due process rights.

8 Accordingly, the court will grant defendants' motion to  
9 dismiss this claim as to the individual board members.

10 3. Claims Against the District

11 Plaintiff alleges that the District is liable for the  
12 violation of plaintiff's procedural due process rights. (See SAC  
13 at ¶¶ 244-247); (see Pl.'s Opp'n at 32-39.) Because 42 U.S.C. §  
14 1983 does not provide for vicarious liability, local governments  
15 "may not be sued under § 1983 for an injury inflicted solely by  
16 its employees or agents." Monell v. Department of Social  
17 Services of the City of New York, 436 U.S. 658, 694 (1978)  
18 "Instead, it is when execution of a government's policy or  
19 custom, whether made by its lawmakers or by those whose edicts or  
20 acts may be fairly said to represent official policy, inflicts  
21 the injury that the government as an entity is responsible under  
22 § 1983." Id.

23 The Supreme Court has held that "municipal liability  
24 may be imposed for a single decision by municipal policymakers  
25 under appropriate circumstances." See Pembaur v. City of  
26 Cincinnati, 475 U.S. 469, 481 (1986). However, "[t]he fact that  
27 a particular official, even a policymaking official, has  
28 discretion in the exercise of particular functions does not,

1 without more, give rise to municipal liability based on an  
2 exercise of that discretion." See id. at 482. "The official  
3 must also be responsible for establishing final governmental  
4 policy respecting such activity before the municipality can be  
5 held liable." See id. at 482-483. The Supreme Court has made  
6 clear that "municipal liability under § 1983 attaches where, and  
7 only where, a deliberate choice to follow a course of action is  
8 made from among various alternatives by the official or officials  
9 responsible for establishing final policy with respect to the  
10 subject matter in question." See id. at 483. Whether a  
11 particular official has final policy-making authority is a  
12 question of state law. See City of St. Louis v. Praprotnik, 485  
13 U.S. 112, 123-24 (1988).

14 Plaintiff alleges in her complaint that General Manager  
15 Stump is a policy maker for the District and therefore his  
16 actions constitute official policy. (See SAC at ¶¶ 10, 33-34.)<sup>3</sup>  
17 She has also alleged that General Manager Stump terminated her  
18 and placed her on administrative leave. (See SAC at ¶¶ 133-36).  
19 Therefore, the court must determine whether General Manager Stump  
20 has "final policymaking authority" under state law, such that his  
21 action in allegedly terminating plaintiff without procedural due  
22 process protections constituted official district policy. See  
23 Pembaur, 475 U.S. at 480-81. Although plaintiff has not stated

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24  
25 <sup>3</sup> As the court has articulated above, plaintiff has  
26 failed to plead facts regarding the individual board members or  
27 the board as a whole which indicate that the board played any  
28 role in her termination or the decision to allegedly deprive her  
of pre - and post- termination procedural due process, or that it  
ratified the decision to terminate her.

1 that General Manager Stump had "final policymaking authority",  
2 she has alleged that he was delegated the authority to act on  
3 behalf of the District with regard to the decisions to hire,  
4 fire, and discipline employees and with regard to the process by  
5 which employees were disciplined or terminated. (See SAC at ¶¶  
6 33-34.) However, plaintiff also cites to California Health &  
7 Safety Code § 6497 in her opposition which provides that "the  
8 sanitary board may make rules to carry out the purposes of this  
9 section, and for examinations, appointments, promotions, and  
10 removals, and may from time to time make changes in existing  
11 rules." (See Opp'n to Mot. to Dismiss at 36.); see Cal. Health  
12 & Safety Code § 6497.

13           The court concludes that plaintiff has not adequately  
14 alleged that General Manager Stump was a final policymaker for  
15 the District in the area of employment such that the District can  
16 be liable for his decision to terminate her. In Gillette v.  
17 Delmore, 979 F. 2d 1342, 1350 (9th Cir. 1992), the Ninth Circuit  
18 concluded that a Fire Chief's discretionary authority to hire and  
19 fire employees was insufficient to establish a basis for  
20 municipal liability because he was not responsible for  
21 establishing the city's employment policy; rather, the city  
22 charter granted such authority to the City Manager and City  
23 Council. See id. The Gillette court accordingly held that the  
24 Fire Chief was not a final policymaker and his decision could not  
25 be attributed to the city. See id. Similarly, while General  
26 Manager Stump may have had the discretion to terminate the  
27 plaintiff, like the Fire Chief in Gillette, he does not appear to  
28 have been responsible for establishing the District's employment

1 or promotional policies. Rather, the state policy that plaintiff  
2 identified indicates that it is the District's board, rather than  
3 General Manager Stump, that is responsible for establishing the  
4 District's employment policies. See Cal. Health & Safety Code §  
5 6497. Plaintiff does not allege sufficient facts to indicate  
6 that the board took any role in either ratifying Mr. Stump's  
7 decision, affirmatively voting to terminate plaintiff, or denying  
8 plaintiff procedural due process rights. Therefore, the court  
9 must conclude that, as in Gillette, General Manager Stump was not  
10 a final policy maker and his decision to terminate plaintiff  
11 cannot be attributed to the District.

12 Accordingly, the court will grant defendants' motion to  
13 dismiss plaintiff's procedural due process claim under 42 U.S.C.  
14 § 1983 as against the Susanville Sanitary District.

15 B. Conspiracy to Deprive Procedural Due Process

16 Plaintiff's sixth cause of action alleges that the  
17 District, individual board members, and General Manager Stump  
18 engaged in a conspiracy with the intent of depriving plaintiff of  
19 her procedural due process rights protected under the federal  
20 constitution. (See SAC at ¶¶ 262-270.) However, "conspiracy is  
21 not itself a constitutional tort under § 1983." See Lacey v.  
22 Maricopa Cnty., 693 F.3d 896, 935 (9th Cir. 2012) (internal  
23 citations omitted). While conspiracy allegations have sometimes  
24 been used by plaintiffs to "draw in private parties who would  
25 otherwise not be susceptible to a § 1983 action because of the  
26 state action doctrine or to aid in proving claims against  
27 otherwise tenuously connected parties in a complex case" (see  
28 id.), plaintiff may not bootstrap a § 1983 claim into a separate

1 cause of action for conspiracy simply by alleging that two or  
2 more persons combined to commit the action.<sup>4</sup> Plaintiff has cited  
3 no legal authority whatsoever to support her claim of conspiracy  
4 in her opposition. (See Opp'n to Mot. to Dismiss at 51-52.)  
5 Accordingly, the court will grant defendants' motion to dismiss  
6 this claim.<sup>5</sup>

7 V. State Law Claims

8 A. Violation of District Law, Policy, and Procedure

9 Plaintiff has styled her fourth cause of action as  
10 "Violation of District Law, Policy, and Procedure." (See SAC at  
11 ¶¶ 207-239.) Plaintiff argues she did so because defendants  
12 argued in their previous motion to dismiss that "the only basis  
13

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14 <sup>4</sup> Plaintiff has never given any indication that she seeks  
15 to bring a cause of action for conspiracy under 42 U.S.C. § 1985.  
16 Despite being asked by the court to identify the statute or  
17 common law doctrine that she claims authorizes her cause of  
18 action, plaintiff has failed to do so again in her Second Amended  
19 Complaint.

20 <sup>5</sup> The court notes that plaintiff has sued both General  
21 Manager Stump and the individual members of the Susanville  
22 Sanitary Board of Directors in their official and individual  
23 capacities. (See generally SAC.) Individual capacity suits seek  
24 to impose personal liability upon a government official for  
25 actions he takes under color of state law. See Scheuer v.  
26 Rhodes, 416 U.S. 232, 237-38 (1974). Official capacity suits, in  
27 contrast, "generally represent only another way of pleading an  
28 action against an entity of which an officer is an agent." See  
29 Monell, 436 U.S. at 690 n. 55. As long as the government entity  
30 receives notice and an opportunity to respond, an official-  
31 capacity suit is, in all respects other than name, to be treated  
32 as a suit against the entity. See Kentucky v. Graham, 473 U.S.  
33 159, 166 (1985) (internal citations omitted). Because the court  
34 has concluded that the District is not liable for either of  
35 plaintiff's federal claims, the court will also dismiss the  
36 federal claims against all defendants in their official  
37 capacities.

1 on which a public employee can complain about termination is that  
2 the employer violated its own laws in carrying out the  
3 termination.” (See Opp’n to Mot. to Dismiss at 52.) Leaving  
4 aside the obvious point that it is unwise to base a cause of  
5 action in a complaint solely on an argument made by defendants in  
6 their motion to dismiss, plaintiff has not pointed to any common  
7 law doctrine or statute which provides a cause of action for an  
8 alleged violation of the District’s law, policy, and procedure.  
9 It appears to the court that plaintiff is already arguing that  
10 the District violated its laws, policies, and procedures through  
11 her procedural due process claims. Although the court might  
12 conceivably be able to identify a cause of action or common law  
13 doctrine that would permit plaintiff to proceed on this theory  
14 apart from her procedural due process claim, the court should not  
15 be required to expend hours of time performing the legal research  
16 to do so. Instead, the court will dismiss this cause of action  
17 for failure to adequately state a claim under Federal Rule of  
18 Civil Procedure 12(b)(6) and grant plaintiff leave to amend.

19 B. Government Claims Act

20 The District is alleged to be a “public utility  
21 district” and the named defendants are alleged to be either  
22 District Board Members or its public employees. (See SAC at ¶¶  
23 4-5, 9-37.) Under the Government Claims Act, a “public entity”  
24 includes districts, public agencies, and any other political  
25 subdivision or political corporation in the state. See Cal.  
26 Gov’t. Code § 811.2. The District was formed pursuant to the  
27 Sanitary District Act of 1923, found at California Health and  
28 Safety Code § 6400, et. seq. (See SAC at ¶¶ 4-5.) The

1 Government Claims Act applies to sanitary districts and therefore  
2 applies to the Susanville Sanitary District. See Ambrosini v.  
3 Alisal Sanitary Dist., 154 Cal. App. 2d 720, 723 (1st Dist. 1957)  
4 (holding that tort liability rules applicable to municipal  
5 corporations are applicable to sanitary districts).

6 The Government Claims Act establishes certain  
7 conditions precedent to the filing of a lawsuit against a public  
8 entity for money or damages. See Cal. Gov't. Code § 900 et seq.  
9 In order to comply with the Government Claims Act, a plaintiff  
10 who files an administrative claim with a public entity must  
11 either receive a notice of the claim's rejection or give the  
12 entity 45 days to respond to the claim prior to the filing of any  
13 lawsuit, after which the entity's inaction is deemed a rejection.  
14 See Cal. Gov't. Code §§ 912.4, 945.4. The failure to timely  
15 present a claim to the public entity bars the claimant from  
16 filing a lawsuit against that public entity. See J.J. v. City of  
17 San Diego, 223 Cal. App. 4th 1214, 1219 (4th Dist. 2014).<sup>6</sup> A  
18 plaintiff's complaint must plead facts demonstrating or excusing  
19 compliance with the claims presentation requirements of the  
20 California Government Claims Act to survive a motion to dismiss.  
21 See State of California v. Superior Court, 32 Cal. 4th 1234, 1239  
22 (2004). Absent some exception or legal excuse, plaintiff's

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23  
24 <sup>6</sup> The failure to timely present a claim to the public  
25 entity also bars the claimant from filing a lawsuit against that  
26 entity's public employee for an act or omission that occurred in  
27 the scope of employment. See Cal. Gov't. Code § 950.2. The  
28 failure to present a claim under the Government Claims Act also  
bars allegations of "ultra vires" employment termination. See  
Colodney v. Cnty. of Riverside, Case No. EDCV 12-00427-VAP (SPx),  
2013 WL 12200649, at \*6-7, (C.D. Cal. Aug. 16, 2013), aff'd, 651  
F.App'x 609 (9th Cir. 2016).

1 failure to present a public entity claim under the Government  
2 Claims Act to the District prior to filing suit accordingly  
3 constitutes a defect to each of plaintiff's state law causes of  
4 action seeking damages.

5 1. Injunctive and Declaratory Relief

6 Plaintiff first argues that she need not comply with  
7 the presentation requirements for claims for money or damages  
8 because her claim is primarily one for declaratory and/or  
9 injunctive relief. (See SAC at ¶ 2.); (see Pl.'s Opp'n to Mot.  
10 to Dismiss at 57.) In Eureka Teachers Ass'n v. Board of  
11 Education, 202 Cal. App. 3d 469, 475 (1st Dist. 1998), the court  
12 held that the claims presentation requirement under the  
13 Government Claims Act is inapplicable in "actions which seek  
14 injunctive or declaratory relief and certain actions in mandamus.  
15 . . and where money is an incident thereto." Id. at 475.

16 However, the rule exempting compliance with claims presentation  
17 requirements for injunctive or declaratory relief is inapplicable  
18 where a petition for extraordinary relief is merely incidental or  
19 ancillary to a prayer for damages. See Loehr v. Ventura Cmty.  
20 Coll. Dist., 147 Cal. App.3d 1071, 1081 (2nd Dist. 1983).

21 Plaintiff states that "the primary purpose of this  
22 action is to obtain declaratory and injunctive relief in the form  
23 of an injunction returning the plaintiff to her former position,  
24 and an order compelling the defendants to comply with the laws,  
25 policies and contracts of the District . . ." (See SAC at ¶ 2.)  
26 Plaintiff states that her prayer for monetary damages, such as  
27 back pay, and employment benefits are merely incidental to her  
28 claims for equitable relief. (See id.) However, a fair reading

1 of the Second Amended Complaint does not support such an  
2 interpretation.

3           Having reviewed plaintiff's Second Amended Complaint,  
4 the court cannot conclude that plaintiff's prayer for damages is  
5 "clearly incidental to her claim for injunctive and declaratory  
6 relief." See Eureka Teachers, 202 Cal. App.3d at 475. Instead,  
7 it appears that plaintiff is simply trying to bypass the  
8 Government Claims Act through creative pleading. Plaintiff  
9 pleads in the alternative in each of her first six causes of  
10 action that if she "is not reinstated to her employment with the  
11 District, she will be entitled to an award of her lost future  
12 earnings and benefits." (See SAC at ¶¶ 175, 192, 205, 238, 260,  
13 269.) In plaintiff's fifth and sixth cause of action for  
14 procedural due process violations and conspiracy to violate  
15 procedural due process, which are brought under both the federal  
16 and state constitutions, she claims that she is entitled to  
17 damages in excess of \$100,000 for "emotional distress, anxiety,  
18 humiliation, and embarrassment." (See SAC at ¶ 253.) She also  
19 seeks exemplary damages in excess of \$100,000.000. (See id. at ¶  
20 254.)<sup>7</sup> Plaintiff additionally seeks "general and compensatory  
21 damages in sums to be proved at trial", "special damages in sums  
22 to be proved at trial", and "exemplary damages in sums to be  
23 proved at trial." (See SAC at ¶ 285.) Accordingly, plaintiff  
24 has not alleged sufficient facts to show that she is exempt from  
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26           <sup>7</sup> Plaintiff has never specified whether these damages are  
27 pursuant to her federal causes of action, which are not subject  
28 to the Government Claims Act, or her state causes of action.  
Instead, plaintiff has simply lumped her federal and state law  
claims together in one cause of action.

compliance from the Government Claims Act on the grounds that the monetary damages sought are merely incidental to declaratory or injunctive relief. Having concluded that plaintiff was compelled to file a timely demand with the District as a pre-requisite to initiating her lawsuit, the court must next determine whether there was satisfactory compliance with the Government Claims Act.

## 2. Actual Compliance with Government Claims Act

Plaintiff argues that she has actually complied with the Government Claims Act “by way of various written communications to the District through its General Managers, as well as written and oral communications to the defendants’ retained legal counsel, Kevin A. Flautt.” (See SAC at ¶ 38.) Plaintiff contends that these communications include: (1) a letter dated January 16, 2020 from plaintiff’s counsel Thomas Beko to General Manager Stump; (2) a letter dated February 5, 2020, from Thomas Beko to defendants’ counsel Mr. Flautt, (3) a letter dated March 30, 2020 from Thomas Beko to the defendants’ counsel; (4) a series of voicemail messages between Thomas Beko and defendants’ counsel, including three calls in February 2020; (5) a series of telephone conversations between Thomas Beko and defendants’ counsel, including two calls in February 2020; (6) a series of email communications between Thomas Beko and defendants’ counsel, including four between February 14, 2020 and March 5, 2020; and (6) a series of correspondence between Thomas Beko and defendants’ counsel, including those sent by defendants’ counsel on January 30, 2020 and April 6, 2020. (See id.)<sup>8</sup>

<sup>8</sup> The Government Claims Act requires that a written claim be presented to the public entity. See Cal. Gov't. Code § 945.4.

1           As a preliminary matter, the court doubts that a series  
2 of letters, most of which were sent to defendants' counsel, can  
3 constitute a claim under the Government Claims Act. Defendants'  
4 counsel is not the proper recipient of a claim under the  
5 Government Claims Act. Rather, the Government Claims Act  
6 instructs that "a claim. . . shall be presented to a local public  
7 entity by either . . . delivering it to the clerk, secretary, or  
8 auditor thereof" or "mailing it to the clerk, secretary, auditor,  
9 or to the governing body at its principal office." See Cal.  
10 Gov't. Code § 915(a)(1-2.)

11           It is also questionable whether a series of letters can  
12 ever constitute a claim within the meaning of the Government  
13 Claims Act. This is because "[i]t would be difficult for the  
14 public entity to identify whether a particular letter were a  
15 claim and which letter triggered its obligation to accept or deny  
16 a claim if a series of correspondence could be considered  
17 collectively to constitute a claim." Dilts v. Cantua Elementary  
18 School Dist., 189 Cal. App. 3d 27, 35 (5th Dist. 1987). "If an  
19 agency was unable to determine whether a claim had been filed or  
20 when the claim had been filed, it would be equally difficult for  
21 the court to determine which statute of limitation applied or  
22 when the statute of limitation began to run." See id. The  
23 procedures prescribed by the Government Claims Act "envisioned  
24 the filing of a single claim with the public entity so that the  
25 public entity may investigate the claim, consider settlement and  
26

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27 It goes without saying that oral communications are not a written  
28 claim. See Wilhite v. City of Bakersfield, No. 1:11-CV-1692 AWI  
JLT, 2012 WL 273088, at \* 7 (E.D. Cal. Jan. 30, 2012).

1 formally approve or reject a claim.” See id.

2           Nevertheless, without the ability to view the letters  
3 that plaintiff contends constituted actual compliance with the  
4 Government Claims Act, the court cannot determine whether those  
5 letters comply with the required elements of a claim under the  
6 Government Claims Act.

7           Plaintiff alternatively argues that she has actually  
8 complied with the Government Claims Act through “supplemental  
9 claims” presented to the District on September 2, 2020 and March  
10 31, 2021. (See SAC at ¶¶ 41-42.) These claims were filed after  
11 plaintiff initially filed this suit in August 2020 and after  
12 defendants filed their first motion to dismiss their first motion  
13 to dismiss on September 1, 2020. (See Docket No. 12.) Plaintiff  
14 emphasizes that the time limits within which to submit a claim to  
15 the District were tolled by way of a State of Emergency declared  
16 by the Governor of California on March 4, 2020 and supplemental  
17 orders thereto and that the time within which to submit a claim  
18 has not expired. (See id. at ¶¶ 43-44.)

19           Despite plaintiff’s arguments, the court must conclude  
20 that these “supplemental” government claims, delivered after the  
21 filing of plaintiff’s complaint, do not establish compliance with  
22 the Government Claims Act even though the statute of limitations  
23 for plaintiff to file a claim with the District had not yet run.  
24 Timely claims presentation is not merely a procedural  
25 requirement, but a condition precedent to the claimant’s ability  
26 to maintain an action against the public entity. See Le Mere v.  
27 Los Angeles Unified Sch. Dist., 35 Cal. App. 5th 237, 246 (2nd  
28 Dist. 2019). Plaintiff has not cited, nor is the court aware of

any cases permitting a plaintiff to “cure” her failure to file a pre-lawsuit claim by filing a post-lawsuit claim. See Le Mere., 35 Cal. App. 5th at 244 (2nd Dist. 2019). A judge in this district has even held that a plaintiff’s failure to present a government claim prior to filing the lawsuit was fatal to his state law claims, despite the fact that the plaintiff filed a claim with the government entity only one day after filing the lawsuit and even though plaintiff in that case had a meritorious argument that the submission deadline for his claim had not expired. See McDaniel v. Diaz, Case No. 1:20-cv-00856-NONE-SAB, 2020 WL 7425348, \*28 (E.D. Cal. Dec. 18, 2020). This is because the purpose of the Government Claims Act is not to “prevent surprise [but rather] is to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation. . .” See J. J., 233 Cal. App. 4th at 1219. As the court noted in Le Mere, “[f]iling a government claim while simultaneously attempting to prosecute a cause of action based on that claim. . . does not satisfy the purpose of the Government Claims Act. . .” See Le Mere, 35 Cal. App. 5th at 248.<sup>9</sup>

Accordingly, the court concludes that plaintiff has not adequately alleged facts demonstrating compliance with the

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<sup>9</sup> Plaintiff’s argument that the District was “fully aware of plaintiff’s claims and allegations” is inapposite. (See Pl.’s Opp’n to Mot. to Dismiss at 55-56.) “[I]t is well-settled that claims statutes must be satisfied even in the face of the public entity’s actual knowledge of the circumstances surrounding the claims. Such knowledge, standing alone, constitutes neither substantial compliance nor a basis for estoppel.” See J.J., 223 Cal. App. 4th at 1219 (internal citations omitted).

Government Claims Act.

3. Notice Provisions of Government Claims Act

Plaintiff next contends that the defendants "never provided notice to the plaintiff or her retained representatives that her claims were defective or deficient in any way" and argues that their failure to provide such notice waives the defendants' right to assert any defense based upon the Government Claims Act. (See Compl. at ¶ 59.) However, California Government Code § 911 states that no notice regarding the insufficiency of a claim "need be given and no waiver shall result when the claim as presented fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant." See Cal. Gov't. Code § 911. Because plaintiff has not attached the letters that she contends constitute her compliance with the Government Claims Act to her complaint, the court cannot determine whether the Susanville Sanitary District was obligated to provide plaintiff with notice that her claim was defective or deficient in any way. Accordingly, plaintiff has not adequately alleged that the Susanville Sanitary District was obligated to provide her notice as to the deficiency of her claims and that the District has waived any defense as to the sufficiency of plaintiff's claim under the Government Claims Act.

4. Estoppel

Plaintiff next argues that defendants should be estopped from asserting the defense that plaintiff did not comply with the Government Claims Act because they "failed to produce records in compliance with the California Public Records Act as a

1 means by which to prevent the plaintiff from asserting claims.”  
2 (See SAC at ¶ 60.) “A public agency is subject to estoppel from  
3 the assertion of either the time limits for filing tort claims,  
4 or the statute of limitations on a cause of action.” See Jordan  
5 v. City of Sacramento, 148 Cal. App. 4th 1487, 1496 (3d Dist.  
6 2007). “The doctrine of equitable estoppel is based on the  
7 theory that a party who by his declarations or conduct misleads  
8 another to his prejudice should be estopped from obtaining the  
9 benefits of his misconduct.” See Kleinecke v. Montecito Water  
10 Dist., 147 Cal. App. 3d 240, 245 (2nd Dist. 1983) (internal  
11 citations omitted). “To establish estoppel as an element of a  
12 suit, the elements of estoppel must be especially pleaded in the  
13 complaint with sufficient accuracy to disclose facts relied  
14 upon.” See Chalmers v. County of Los Angeles, 175 Cal. App. 3d  
15 461, 467 (2nd Dist. 1985). In order to assert equitable  
16 estoppel, the following four elements must be present:

17 (1) the party to be estopped must be apprised of  
18 the facts; (2) he must intend that his conduct be  
19 acted on, or must so act that the party asserting  
20 had a right to believe it was so intended; (3)  
the party asserting estoppel must be ignorant of  
the true state of facts; and (4) he must rely  
upon the conduct to his injury.

21 See Sofranek v. Cnty. of Merced, 146 Cal. App. 4th 1238, 1247  
22 (5th Dist. 2007). California courts have previously found that  
23 there is no estoppel where the complaint “contains no facts about  
24 being misled or detrimental reliance.” See Chalmers, 175 Cal.  
25 App. 4th at 467.

26 Plaintiff’s Second Amended Complaint contains no facts  
27 about being misled or detrimental reliance, as is required to  
28

1 establish estoppel as an element of a suit. See Chalmers, 175  
2 Cal. App. 3d at 467. Moreover, despite plaintiff's contention  
3 that she was unable to file a government claim because of  
4 defendants' alleged failure to produce certain public documents,  
5 she also notes that "a presented claim need only include the  
6 claimant's name and address, names of public employees involved,  
7 and a description of the incident, including the date, place, and  
8 proclaimed damages." See Wormuth v. Lammersville Union Sch.  
9 Dist., 305 F. Supp. 3d 1108, 1128 (E.D. Cal. 2018) (Mueller, J.).  
10 It is inconceivable that plaintiff lacked this very basic factual  
11 information or that she could only have gotten this information  
12 from the public records allegedly not produced by the District.  
13 Accordingly, plaintiff has failed to adequately plead that  
14 estoppel applies here.<sup>10</sup>

15 For the foregoing reasons, plaintiff's failure to  
16 allege facts demonstrating or excusing compliance with the claims  
17 presentation requirement of the Government Claims Act bars all

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18 <sup>10</sup> Plaintiff also contends that she need not submit her  
19 contract-based claims to the District under the Government Claims  
20 Act because (1) the district's personnel policies and its  
21 memorandum of understanding include a claim procedure which  
22 govern this matter exclusively; (2) her claims for wages, salary,  
23 and fees are exempted from the presentation requirements of the  
24 Government Claims Act; and (3) she substantially complied with  
25 the Government Claims Act's presentation requirements. (See Pl's  
26 Opp'n to Mot. to Dismiss at 60-78.) Plaintiff did not assert  
27 these excuses from compliance with the Government Claims Act in  
28 her Second Amended Complaint, and the California Supreme Court  
has held that plaintiff must "allege facts demonstrating or  
excusing compliance with the claim presentation requirement"  
within the complaint itself. See State of Cal., 32 Cal. 4th at  
1239. Accordingly, the court will not consider these arguments  
at present but will give plaintiff leave to amend to allege the  
facts to support these arguments in the next iteration of her  
complaint.

1 her state law causes of action apart from her claim under the  
2 California Public Records Act.

3 C. California Public Records Act

4 Plaintiff also contends that defendants have violated  
5 the California Public Records Act ("CPRA"), Cal. Gov't. Code §  
6 6250, et seq. (See SAC at ¶¶ 271-285.) The CPRA states that  
7 "except with respect to public records exempt from disclosure by  
8 express provisions of law, each state or local agency, upon a  
9 request for a copy of records that reasonably describes an  
10 identifiable record or records, shall make the records promptly  
11 available to any person. . ." See Cal. Gov't. Code § 6253(b).  
12 The term "public records" includes "any writing containing  
13 information relating to the conduct of the public's business  
14 prepared, owned, used, or retained by any state or local agency."  
15 Cal. Gov't. Code § 6252(e). Section 6253(c) provides that the  
16 "agency, upon request for a copy of records, shall, within 10  
17 days from receipt of the request, determine whether the request,  
18 in whole or in part, seeks copies of disclosable public records  
19 in the possession of the agency and shall promptly notify the  
20 person making the request of the determination and the reasons  
21 therefor." See Cal. Gov't. Code § 6253(c).

22 Section 6258 of the CPRA provides that "[a]ny person  
23 may institute proceedings for injunctive or declarative relief or  
24 writ of mandate in any court of competent jurisdiction to enforce  
25 his or her right to inspect or to receive a copy of any public  
26 record or class of public records under this chapter." See id.  
27 In order to prevail on such a petition under the CPRA, the  
28 plaintiff must establish that the files requested (1) qualify as

1 "public records" and (2) were in the possession of the District.  
2 See Consolidated Irrigation Dist. v. Superior Court, 205 Cal.  
3 App. 4th 697, 709 (5th Dist. 2012.) "The CPRA generally presumes  
4 that all documents maintained by a public entity are subject to  
5 disclosure to any member of the public, unless a statutory  
6 exemption applies, or the catchall exemption, 6255, is satisfied  
7 (when public interest served by nondisclosure of records clearly  
8 outweighs the public interest in disclosure)." See Sander v.  
9 Superior Court, 26 Cal. App. 5th 651, (1st Dist. 2018). If it  
10 appears from the plaintiff's verified petition that "certain  
11 public records are being improperly withheld from a member of the  
12 public," the court shall order the officer or person charged with  
13 withholding the records to disclose the public record or show  
14 cause why he or she should not do so. See Galbiso v. Public  
15 Utility Dist., 167 Cal.App.4th 1063, 1084 (5th Dist. 2008).

16 Defendants argue that plaintiff has not reasonably  
17 identified what records were requested and which records have  
18 still not been produced in her Second Amended Complaint. (See  
19 Mot. to Dismiss at 47.) The court agrees. Plaintiff attached to  
20 her complaint a letter from her counsel on May 20, 2020 to  
21 defendants' counsel, Kevin Flautt, requesting certain categories  
22 of public records. (See SAC at Ex. 2.) Plaintiff also attached  
23 Mr. Flautt's response on May 29, 2020, which provided anticipated  
24 deadlines for when plaintiff could expect the production of  
25 certain documents, ranging from June 29, 2020 to September 29,  
26 2020. (See id.) The letter also stated that certain documents  
27 might be exempt from disclosure pursuant to the CPRA and would  
28 not be produced. (See id.) However, it is unclear to the court,


1 based on the letters attached to the Second Amended Complaint,  
2 what documents defendants have already produced pursuant to  
3 plaintiff's CPRA request and what documents have not.  
4 Accordingly, plaintiff has not adequately stated a claim for  
5 violation of the California Public Rights Act, and this cause of  
6 action will be dismissed with leave to amend.<sup>11</sup>

7 IT IS THEREFORE ORDERED that the defendants' motion to  
8 dismiss (Docket No. 42) be, and the same hereby is, DENIED as to  
9 plaintiff's fifth cause of action under 42 U.S.C. § 1983 for  
10 deprivation of procedural due process as against defendant Steve  
11 J. Stump.

12 IT IS FURTHER ORDERED that defendants' motion to  
13 dismiss be, and the same hereby is GRANTED as against all  
14 defendants other than defendant Stump on plaintiff's fifth cause  
15 of action and as against all defendants on plaintiff's first,  
16 second, third, fourth, sixth, and seventh causes of action.

17 Plaintiff has twenty days from the date this Order is  
18 signed to file an amended complaint, if she can do so consistent  
19 with this Order.

20 Dated: June 16, 2021

  
WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE

21  
22  
23  
24 <sup>11</sup> In addition to complying with the requirements to state  
25 a claim under the CPRA, plaintiff is instructed to explicitly  
26 detail the categories of public records and particular public  
27 documents sought that have not yet been produced by defendants.  
28 Defendants will then have an opportunity to either produce the  
requested public documents, or explain why they believe that the  
documents which have been identified as responsive to the  
plaintiff's CPRA request fall within one of the exemptions from  
disclosure within the CPRA.